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Supreme Court, U.S.
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No. _____ OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1996

IN THE MATTER OF ANONYMOUS - PETITIONER

- vs. -

CHIEF JUDGE JUDITH S. KAYE, and ASSOCIATE JUDGES JOSEPH BELLACOSA,CARMEN BEAUCHAMP CIPARICK, HOWARD A. LEVINE, RICHARD D. SIMONS, GEORGE BUNDI SMITH, and VITO J. TITONE individually and in their official capacity as Judges of the Court of Appeals of the State of New York; CHIEF JUSTICE WILENTZ, JUSTICES CLIFFORD, HANDLER, POLLOCK, O'HERN, GARIBALDI, STEIN individually and in their official capacity as Judges of the Supreme Court of the State of New Jersey; SETON HALL UNIVERSITY SCHOOL OF LAW, A Corporation of the State of New Jersey; THE TRUSTEES OF SETON HALL UNIVERSITY SCHOOL OF LAW, Dean RONALD R. RICCIO, individually and in their official capacities; RESPONDENTS

In re Deborah T. Poritz - Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR THE
SECOND CIRCUIT
PETITION FOR WRIT OF CERTIORARI
AND TO EXTEND TIME TO APPEAL AND STAY DECISION

Petitioner, POBox 315, Liberty Corner, N.J. 07938

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QUESTIONS PRESENTED

Whether the Grievance Committee of the Southern District of New York had jurisdiction to investigate former New Jersey Attorney General Deborah Poritz for *ex parte* communication with a New Jersey Superior Court judge that purposed to influence the outcome of a case proceeding in the Southern District of New York.

Whether the Second Circuit Court of Appeals had Appellate jurisdiction over a refusal of the Southern District Grievance Committee to exercise jurisdiction over the former New Jersey Attorney General for *ex parte* communication with a New Jersey Superior Court judge that purposed to influence the outcome of a case proceeding in the Southern District of New York.

Whether the time to appeal should be extended and a decision stayed in a case pending an investigation into *ex parte* communication of a former New Jersey Attorney General Deborah Poritz with a New Jersey Superior Court judge that purposed to influence the outcome a case proceeding in the Southern District when the Second Circuit case was dismissed in reliance on the state case.

Whether the time to appeal should be extended and a decision stayed in a case pending resolution of an appeal of a vacator of a default in a related Third Circuit case when the default was an equivalent of an injunction staying a related state court proceeding and the Order vacating the default is immediately appealable under 28 U.S.C. §1292 and Carson v. American Brands, Inc., 101 S.Ct. 993, 450 U.S. 79, 67 L.Ed.2d 59 (1981) as the equivalent of dissolving and refusing an injunction staying a New Jersey proceedings when the sole purpose of the vacatur was to surrender jurisdiction of a federal suit to a state court under the Collateral Order doctrine of Moses H. Cone Memorial Hosp. v. Mercury Const. 460 U.S., 103 S.Ct. 927, 74 L.Ed.2d 765 (1983), and the Second Circuit case was dismissed in reliance on the state case.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page except in certain cases In re Portiz would be captioned Grievance Committee for the Southern District of New York v. Deborah Poritz.

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APPENDIX B Second Circuit Order refusing to hear a jurisdictional appeal of the Southern District Grievance Committee's refusal to exercise jurisdiction in a grievance filed against former New Jersey Attorney General Deborah Poritz; Motion to extend the time to appeal, dated November 26, 1996; and an Order denying a rehearing dated August 1, 1996 in I/M/O Poritz 96-7164.

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1996
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below in the Second Circuit Court of Appeals in I/M/O Poritz 96-7164; and to extend the time to appeal and stay the decision in the related Second Circuit case Anonymous v. Kaye et al. 95-9295.

OPINIONS BELOW

The Orders appear at Appendix A to the petition that Petitioner requests this Court extend the time to appeal and stay from the United States court of appeals for the Second Circuit in Anonymous v. Kaye et al. 95-9295. This includes an Order denying a motion for reconsideration, stay, or extend the time to appeal dated April 4, 1997; an Order affirming dismissal of the complaint and other relief dated December 23, 1996; and an Order denying a motion to supplement the record on appeal, dated December 5, 1996.

The Orders appealed from the United States Court of Appeals for the Second Circuit in I/M/O Poritz 96-7164 appear at Appendix B to the petition. This includes an Order refusing to hear a jurisdictional appeal of the Southern District Grievance Committee's refusal to exercise jurisdiction in a grievance filed against former New Jersey Attorney General Deborah Poritz. Included are copies of the motion to extend the time to appeal, dated November 26, 1996; and an Order denying a rehearing dated August 1, 1996.

It does not appear the matter is designated for publication as the Second Circuit Court of Appeals mandated that Anonymous v. Kaye not be published.

JURISDICTION

Before the Second Circuit Court of Appeals is a Motion to extend the time to appeal I/M/O Poritz 96-7164 (B2). Supreme Court Rule 11 permits a petition for a writ of certiorari to review a case pending in a Court of Appeals. *28 U.S.C. §2101(e).* It is clear this case is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in this Court.

The Second Circuit had Appellate jurisdiction I/M/O Poritz as the Southern District Grievance Committee had Subject Matter Jurisdiction under, *inter alia* Rule 4 of the Southern District Rules. The Court of Appeals including the Second have also routinely expressed that jurisdiction exists to decide an appeal of an attorney disciplinary matter. *See e.g.,* In re Jacobs, 44 F.2d 84, 87 - 88 (CA 2 1994) *cert denied* 116 S.Ct. 73, (1995); In Re Palmisano 70 F.3d 483, 484 - 85 (CA 7 1995) *cert denied,* 116 S.Ct. 1854 (1996). The United States Supreme Court has reviewed a number attorney disciplinary matters without questioning its jurisdiction strongly suggests that it believed its jurisdiction to be proper. See e.g., In re Snyder 472 U.S. 634, 105 S.Ct. 2874 (1985); In re Ruffalo 390 U.S. 544, 88 S.Ct. 1222 (1968); Theard v. United States, 354 U.S. 278, 7 S.Ct. 1274 (1957).

Jurisdiction in this Court in the Second Circuit case Anonymous v. Kaye et al. 95-9295 is proper under 28 U.S.C. § 1254(1). Jurisdiction from the Second Circuit is also similar to the petition last week of a petition for a writ of certiorari to the Third Circuit Court of Appeals to review a related case Anonymous v. Wilentz 96-5403 (Supreme Court citation omitted) (E 1).[1] The District

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[1]The issue before the Third Circuit is whether a Federal District Court order vacating a default was appealable under 28 U.S.C. §§ 1291, 1292 when the default was the equivalent of a stay of a state court proceeding and the vacatur had the effect of denying injunctive relief.

Court had original Jurisdiction in Anonymous v. Kaye on the existence of a Federal question and by reason of 28 U.S.C. § 1331. The action arose under, for example, 42 U.S.C. §§ 1983, 1985(3); the U.S. Constitution, Article IV, §2, and the Due Process and Equal Protection Clauses of the Fourteenth Amendment. The District Court had exclusive jurisdiction over constitutional challenges to the New Jersey and New York state's rules and regulations concerning issues related to admission to the Bar. District of Columbia Court of Appeals v. Feldman 460 U.S. 462, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983). This included issues related to the delegation of power raised in the instant complaint. (Citation omitted.) The Second Circuit had Appellate Jurisdiction under 28 U.S.C. §§ 1291, 1292.

Anonymous v. Kaye was dismissed (without prejudice) by the Southern District instead of being transferred even though, for example, the federal case was filed before the state case was decided that was used for preclusive effect. Burnett v. New York Central R.R. Co., 380 U.S. 424, 430, 85 S.Ct. 1050, 1055 (1965) (The Supreme Court held that "It is in the interests of Justice to transfer a case rather than dismiss when refiling of this action in the proper venue would be barred by applicable statutes of limitations") *See also* Goldvaur Inc. v. Herman 369 U.S. 463, 467 82 S.Ct. 913, 916 (1962) (Case should be transferred to save parties the time and expense of refiling this lawsuit in a different district.); 28 U.S.C. § 1406(a).

On April 7, 1997 the Second Circuit denied a request to extend the time to appeal the jurisdictional issue and stay the decision in Anonymous v. Kaye (A1). Supreme Court Rule 30 permits an Extension of the Time to appeal and Supreme Court Rule 23 permits a Stay of a decision pending appeal.

STATEMENT OF THE CASE and REASONS FOR GRANTING THE WRIT

The question in I/M/O Poritz was whether the Southern District Committee on Grievances had jurisdiction over former New Jersey Attorney General Deborah Poritz. The former Attorney General represented defendants in the Southern District case Anonymous v. Kaye. A New Jersey Deputy Attorney General signed on behalf of General Poritz. On June 8, 1995, a Grievance was filed against the former Attorney General with the Southern District Committee on Grievances. The Grievance stated the former Attorney General met with a motion judge *ex parte* in a New Jersey state case for the purpose of influencing the outcome of the Southern District litigation in Anonymous v. Kaye. On April 29, 1994, during the pendancy of Anonymous v. Kaye, Summary Judgment oral arguments were held before the related New Jersey Superior Court [redacted] v. Zimmer (citation omitted.) Before the session, the former Attorney General was observed waiting outside to be let in the judge's Chambers. An issue in the state case included a request for a stay of the state action pending resolution of the federal case as well as for the excused joinder of claims and parties. On June 30, the Superior Court granted Summary Judgment against the plaintiff. Anonymous v. Kaye was dismissed in part on preclusion in reliance on the state court case.

Prior to that, a grievance was filed against the former Attorney General with the Office of Attorney Ethics, Supreme Court of New Jersey. On January 31, 1996, the District Ethics Committee for Mercer County disqualified itself from the matter. The Counsel to the Director subsequently indicated the matter was not subject to the attorney disciplinary system because a "conspir[acy] to commit fraud upon the Southern District of New York ... should be reported to the appropriate federal law enforcement agency."[2] A complaint

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[2]It is anticipated after exhausting administrative remedies that a "RICO" complaint will be filed against the former New Jersey

was also filed against the New Jersey Superior Court Judge with the New Jersey Advisory Committee (ACJC) on Judicial Ethics. The matter was listed for discussion. On December 26, 1995 an appeal was made of the ACJC's refusal to permit access to the investigation. The New Jersey Supreme Court said there was good cause (presumably self serving) to deny the petition for review. (Docketed as 42,046). Presumably the ACJC found probable cause to believe there has been an ethics violation because no notice has been given that the matter has not been closed against the state court judge.

Ex parte communication between a state attorney general and a motion judge violates the Federal Rules and the Code of Professional Responsibility. For example, the alleged conduct is in violation of the Rules of Professional Conduct. *See e.g.*, RPC 8.4 Misconduct ("It is professional misconduct for a lawyer to: ... (f) knowingly assist a judge or judicial officer in conduct that is a violation of the code of Judicial conduct or other law.") The stated conduct of Deborah Poritz was sanctionable by a rule such as RPC 8.4 and others. Under Local Southern District Rule 4, the District Grievance Committee had disciplinary jurisdiction over the former General for her role in attempting to influence the outcome of the Southern District litigation (C 1 - 2). According to the Local Rules, one does not have to be admitted to this Court for the Committee to exercise jurisdiction over the person. *See e.g.* 4(k) (C). The Committee refused to exercise jurisdiction because she was not on the "roles of the Court" [although Local Rules permitted the exercise]. Clearly the conduct mandates investigative action by the Committee on Grievances.

The Writ for Certiorari should be granted because the Second Circuit had jurisdiction to review the matter. *See e.g.*, In re Jacobs, 44 F.2d 84, 87 - 88 (CA 2 1994) *cert denied* 16 S.Ct. 73, 133 L.Ed.2d 33 (1995) and the Supreme Court has reviewed number

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Attorney General next month under 18 U.S.C. §§ 1961 *et. seq* (RICO).

attorney disciplinary matters without questioning its jurisdiction strongly suggests that it believed its jurisdiction to be proper. See e.g., In re Snyder 472 U.S. 634, 105 S.Ct. 2874 (1985); In re Ruffalo 390 U.S. 544, 88 S.Ct. 1222 (1968); Theard v. United States, 354 U.S. 278, 7 S.Ct. 1274 (1957). *See* (B 1 - B 3).

Moreover, the Second Circuit's characterization of the basis of the appeal was outrageous (B1). The court overlooked and misapprehended the narrow issue on appeal. The appeal never involved a request to proceed *in pauperis*. The record clearly shows that the appeal was limited to the question of whether Rule 4 of the Southern District permits the exercise of jurisdiction over an attorney not admitted to the New York Bar. When filing fees are required, the amount is generally proscribed by the Judicial Conference of the United States. *See e.g.*, 28 U.S.C. §§ 1913, 1914. Since the District Court did not require payment of a filing fee, the request to "waive" any filing fee in the Court of Appeals was made in good faith and clearly not frivolous. Moreover, filing fees apparently are not generally required for such issues. Apparently Congress did not intend to charge for such matters. *See also* Rule 2 of the Rules of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers Under 28 U.S.C. §372(c) ("There is no filing fee for complaint of misconduct or disability.") Therefore, the Court's application of Neitzke v. Williams to this matter is misapprehended and should be reversed.[3]

There is good cause to extend the time to appeal and stay the decision in the related Second Circuit case Anonymous v. Kaye et al. 95-9295 (A 1 - A 9). The *ex parte* communication between the former New Jersey Attorney General Poritz and the state court motion judge and is relevant under preclusion to whether a party had a fair hearing. The answer is that: *res judicata* does not preclude a federal claim when the state motion judge and General

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[3]A check in the amount of $105 was subsequently provided that the Court refused to accept.

Poritz communicated *ex parte*, because the party did not receive a fair hearing. *See e.g.*, Montana v. U.S., 99 S.Ct. 970, 973 (1979).

On April 20, 1994, as Petitioner's Constitutional injury ripened and after exhausting administrative remedies, suit was filed against the NJ and NY defendants in the New York Southern District. The Constitutional injury ripened after on December 22, 1993 plaintiff applied to take the February 1994 New York Bar exam. Plaintiff completed the Graduation and residency requirements from Seton Hall Law School in January 1994. However, Seton Hall arbitrarily refused to certify documents of the plaintiff's graduation to take the February and July 1994 NY Bar Exams. The documents were necessary for completion of applicant's file. The State of New York, Court of Appeals, denied plaintiff's petition for a waiver of the requirements for SHU to certify the documents. The Board stated the rules for admission to the bar did not allow a grant of a waiver of these documents. Plaintiff would have and should have been admitted into the NY bar exam to qualify for the practice of law but for defendants' activities.

Plaintiff properly invoked the subject matter jurisdiction of the District Court. The complaint presents a constitutional challenge to bar admission rules that the District Court possessed subject matter jurisdiction to review. District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983). A federal district court does not review a state court judicial decision when it entertains a challenge to the constitutionality of state general rules and regulations governing admission to the bar. Id. 460 U.S at 486. Defendants act in a non-judicial capacity in promulgating rules regulating admission to the bar. Id. at 462. Moreover, claims for violation of the federal antitrust laws have been held to be within the exclusive jurisdiction of the federal courts. Freeman v. Bee Machine Co., 319 U.S. 448 (1943). A United States District Court has subject matter jurisdiction under § 4 of the Sherman Act (15 U.S.C. § 4) to prevent and restrain violations by the ABA of § 1 of the Sherman Act (15 U.S.C. § 1). *See e.g,* United States of America v. American Bar Association, 95 Civ. 1211 (CRR) (D.C.D.C. 1995).

Defendants are directly involved in the accreditation process and have nationwide contacts. Omni Capital International v. Rudolf Wolff & Co., 484 U.S. 97 (1987) (The constitutional limits of the court's personal jurisdiction in such a federal question case requires only that a defendant have "minimum contacts" with the United States.) By their own admissions they are involved in the process and policy that delegated unconstitutional power to Seton Hall law school and have involved themselves in policy that caused at a minimum a constitutional tort. Monell v. New York City Dept. of Soc. Servs., 436 U.S. 658 (1978). *See also* Collins v. City of Harker Heights, Tex. 112 S.Ct. 1061, 1066 (1992). It is unconstitutional to delegate power without the minimum due process required by the Constitution. Plaintiff was erroneously deprived of property and liberty interests that adequate safeguards would have prevented.

A crucial question in examining delegation of power is the interests at issue and the risk of erroneous deprivation. The Supreme Court specifically rejects any delegation of power without adequate Fourteenth Amendment safeguards to "private" or state actors who can affect interstate activities. Highland Farms Dairy v. Agnew, 300 U.S. 608, 614, 557 S.Ct. 549, 552 (1937) (Court does not condone *private* agency's regulation of *intra*state activity.); Eubank v. Richmond, 226 U.S. 137, 33 S.Ct. 76 (1914); Polar Ice Cream & Creamery v. Andrews, 375 U.S. 361, 377, 84 S.Ct. 378, 387 (1964) (Court rejected *state* agency regulation of *inter*state activities). Defendants, including SHU and the ABA, are state actors for purposes of admission to the Bar. Lombardi v. Tauro, 470 F.2d 798 (5th Cir. 1972) *cert denied* 412 U.S. 919 (State law requirement that candidates for admission to the state bar be graduates of a qualified law school inevitably causes a private law school to become affected with "state action".) A "State cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment." Schware v. Board of Bar Examiners, 353 U.S. 232, 238-9, 77 S.Ct.

752, 755-6 (1956). The root requirement of the Due Process Clause is that an individual be given an opportunity for a hearing at a "meaningful time" *before* [that individual] is deprived of any significant property interest. *See generally* Boddie v. Connecticut, 401 U.S. 371, 379, 91 S.Ct. 780, 786 (1971); Bell v. Burson, 402 U.S. 535, 542, 91 S.Ct. 1586, 1591 (1971); Goldberg v. Kelly, 397 U.S. 254, 267-68, 90 S.Ct. 1011, 1020, (1970) (interest in continued receipt of benefits are safeguarded by procedural due process); Cleveland Bd. Of Education v. Loudermill, 470 U.S. 532, 105 S.Ct. 1487 (1985); Armstrong v. Manzo, 380 U.S. 545, 552, 85 S.Ct. 1187, 1191 (1965); Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 313, 70 S.Ct. 652, 656 (1950). An individual possesses a Constitutional liberty and property interest in a law degree once beginning a course of study. Anderson v. University of Wisconsin, 665 F.Supp. 1372, 1396 (W.D.Wis. 1987) *aff'd* 841 F.2d 737 (7th Cir. 1988), *citing* Martin v. Helstad, 578 F.Supp. 1473, 1480 (W.D.Wis 1983); Board of Curators of the University of Missouri v. Horowitz, 435 U.S. 78, 84, 98 S.Ct. 948, 952 (1978) (constitutionally protected liberty or property interest in the pursuit of a medical degree.); Greenhill v. Bailey, 519 F.2d 5 (8 Cir. 1975) (student deprived of a significant interest in liberty in that it made it improbable that he would be able to pursue his medical education elsewhere.) The credits that make up scholastic degrees are afforded the same due process protection that those degrees are afforded. Merrow v. Goldberg, 672 F.Supp. 766 (D.C.V.T. 1987). Moreover, the right to take the bar exam is constitutionally protected on the same basis as an individual's right to qualify for the practice of law. Greene v. McElroy, 360 U.S. 474, 79 S. Ct. 1400 (1959); Schware v. Board of Bar Examiners of the State of New Mexico, 353 U.S. 232, 77 S. Ct. 752 (1957) (applicant for state bar examination denied opportunity to qualify for the practice of law contrary to the Due Process Clause of the Fourteenth Amendment); In Re Griffiths, 413 U.S. 717, 93 S.Ct. 2851 (1973) (resident alien has constitutional right to take bar examination to qualify for the practice of law); Baccus v. Karger, 692 F.Supp. 290, 295 (S.D.N.Y. 1988) (The court found the practical effect of taking the bar exam is basically the same as

admission to the bar and, therefore, admission to the practice of law. The court applied the same constitutional tests to examine an individual's right to take a bar examination as would be used to examine an individual's right to qualify for the practice of law.) The deprivation of a constitutional right is an irreparable injury. (Citation omitted.)

On April 21, Southern District Judge Keenan issued an Order to Show Cause why plaintiff should not be allowed to take the July 1994 New York Bar exam and for Protective and Sealing Orders. On May 2, Judge Keenan ordered a briefing schedule and ordered all parties to agree to terms of Protective and Sealing Order. Counsel for both the NJ and NY defendants were in attendance and consented and agreed to an Anonymous Caption. On July 11, plaintiff requested Judge Keenan waive the requirement to request excused joinder in the state court action and Order the joinder of the SHU defendants. On July 25, the Southern District denied plaintiff' motion for a preliminary injunction allowing plaintiff to take the July 1994 New York Bar exam but said the plaintiff would be entitled to monetary damages. On August 1, a First Amended Complaint was filed to add SHU defendants. About October 14, SHU filed an Answer and omitted the defense of the Entire Controversy Doctrine, thereby waving the defense. On November 7, plaintiff filed a cross-motion to Compel the certification of plaintiff's graduation and diploma. On December 15, 1994 SHU certified plaintiff graduation but issued the diploma with the wrong graduation date of August 1994 and not January 1994. On December 6, Judge Keenan stayed all Discovery. On December 27, Judge Keenan denied a cross-motion to file a Second Amended Complaint adding ABA defendants. On October 15, 1995, over eighteen months after the filing of the original Complaint, the Southern District dismissed the Complaint without prejudice. On December 12, Judge Keenan granted leave to file a motion for the extension of time by January 2, 1996. On January 27, plaintiff informed the Southern District Judge that pending in the New Jersey District Court was a constitutional challenge to the New Jersey Rules for Admission to the Bar and included a copy of the

Complaint. On February 29, while pending, plaintiff filed a Notice of Motion for an Order to Show Cause why plaintiff should not be permitted access to record of an investigation of a complaint ACJC 95-199 filed with the Supreme Court of New Jersey Advisory Committee on Judicial Conduct. The Southern District declined to issue the show cause order. (Plaintiff requested under the "All Writs Act" for a Stay of New Jersey Court proceedings on two occasions: January 26, 1995 and renewed on June 30, 1995.) On February 28, 1996 the Southern District denied Jurisdictional Discovery. On March 18, Judge Keenan Denied plaintiff's March 14 F.R.C.P. Rule 60(b) Motion for Relief from Judgment or Order. The case Judge Keenan relied on for preclusion relates to a case filed on August 31, 1993, before plaintiff's Constitutional injury ripened and before exhausting administrative remedies. Plaintiff sued a former associate dean at Seton Hall Law School in New Jersey Superior Court. Consistent with New Jersey Court Rule 4:5-1, plaintiff stated in the complaint: "This is not a certification of no other actions against other parties. It is expected that upon completion of discovery, additional parties may need to be joined." On September 24, the Motion Judge in that case denied an anonymous caption unless the plaintiff agreed to withdraw the Complaint. On October 20, after opposing counsel deceived an Appellate Judge, the Appellate Division denied an appeal for an Anonymous Caption. A third Appellate Judge recused himself from the case because of a conflict of interest. On November 10, the New Jersey Supreme Court denied an Appeal for an Anonymous Caption. An appeal of that Order was denied by the United States Supreme Court. Ironically the NJ defendants denied plaintiff's request for an anonymous caption as permitted by State Rule but consented to it in the New Jersey and Southern District Courts.

On March 4, 1994, plaintiff filed for excused joinder in the New Jersey Superior Court. On March 10, the Judge vacated its Order denying an extension of the discovery period and granted a 90-day extension. Shortly thereafter, well before the Order 90 day discovery period, defendant in that case filed for Summary Judgment. On March 8, the Judge denied Protective Orders for

documents that were protected by the Family Educational Rights and Privacy Act of 1974 20 U.S.C. 1232. The defendant later admitted he deceived the court and falsified the record by tampering the documents he submitted to the Court. An Appellate Division denied leave to appeal the protective orders on May 4. However, 1 of the 3 Appellate Judges Keefe, was re-appointed to the Appeal and participated in the denial of the leave to appeal. On April 15, plaintiff Motioned for an Amended Complaint, production of Documents and Answers to Interrogatories, and to Extend the Discovery period. This was based on the state court defendant's lies about plaintiff's graduation without incident in January 1994. As the constitutional claims ripened, in addition to asking for excused joinder, plaintiff sought to add new facts and Count including violation of right to Interstate Travel. In April, the defendant submitted a Supplement Certification admitting he deceived the Court.

On April 22, 1994, the Motion Judge denied plaintiff's Motion for Excused Joinder (after a complaint was filed in the Southern District on April 20). The Judge was required to either excuse or order joinder. The denial was based on a mistake on an adjournment issue made by the Judge's Chambers and fraud by opposing counsel whereby opposing counsel told his office they were not permitted to answer any questions of the plaintiff. On April 29, Summary Judgment oral arguments were held before the motion Judge. Before the session, the former New Jersey Attorney General was observed waiting outside to be let in the motion judge's Chambers. General Poritz was then representing the NJ defendants in the related Southern District case. It appears the Attorney General met with the Judge for the purpose of influencing the outcome of the litigation. On June 30, the Superior Court granted Summary Judgment to the defendant. On January 18, 1995, Appellate Judge Keefe was disqualified from participation in appeal on the Motion of plaintiff. (Judge Keefe previously voluntarily recused himself from a previous appeal in the case.) On March 27, the Appellate Division was asked to Stay the proceedings premised on the Constitutional challenges filed in the Southern District. The

request was denied. On April 25, on plaintiff's motion to the Appellate Division for Reconsideration, the defendant admitted to substituting evidence. In so doing admitted he defrauded the court. Reconsideration was denied on May 24.

On August 9, 1995, plaintiff motioned the New Jersey Superior Court for a Vacate of the Summary Judgment and the Voluntary Recusal of the former motion Judge. The request was based on an article published in the New Jersey Star Ledger, June 21, 1995, wherein the state court defendant basically admitted he had defrauded the Court. On October 2, Judge Hoens denied the motion. She said that the request to recuse the motion Judge was moot as she was transferred to another vicianage. (The motion Judge did not disclose that she was a colleague of opposing counsel and that she personally knew one of the defendant's "witnesses" until after oral arguments on April 29, 1994, the same day it is alleged she violated judicial ethics law by meeting with the former New Jersey Attorney General.)

On January 12, 1996, the New Jersey Supreme Court denied a Stay, Petition for Certification. On January 27, the plaintiff filed a Motion for Reconsideration, or alternatively a Stay. The basis was that the Complaint was filed in the New Jersey District Court and that the threshold matters in the Federal Complaint had to be first decided before the State Court could reach a decision on the matter. The request was denied on March 6. On March 16, plaintiff filed a Motion for Relief from Judgment or Order, a Second Motion for Reconsideration, or alternatively a Stay. The basis was that the Default entered on April 17, against the NJ Defendants had the effect of Staying the related New Jersey Court decisions (D 1).

The Southern District case was dismissed for reasons including lack of jurisdiction and venue. However, a court has no power to render a valid judgment when it rules it lacks personal jurisdiction or is an improper venue. "A dismissal for want of subject matter or personal jurisdiction is not a decision on the merits. Consequently, upon such a dismissal the plaintiff is free to institute the suit anew

in a jurisdiction or under circumstances supporting jurisdiction." n.4 Robinson v. Overseas Military Sales Corp., 21 F.2d. 502, 507 n.4. (CA 2 1994) *citing* Commonwealth Land Title Ins. Co. v. United States, 759 F.Supp. 87, 90 (D.Conn. 1991). Moreover, dismissal of the Complaint on the entire controversy doctrine is without prejudice. Mortgageling Corp. v. Commonwealth Land Title, 142 N.J. 336, 348 (1995). Full faith and credit can not be given to it because it was entered by a court that said it was "without jurisdiction." The entire controversy doctrine was not applicable to bar the Southern District case since the doctrine could not be exported. *See e.g.*, Id. Moreover, Defendants omitted the defense from their answer and thereby waived this defense as plaintiff objected to its subsequent pleading. N.J.R. 4:5-4. Plaintiff requested of Judge Keenan to excuse joinder. Plaintiff at a minimum perfected the claims for federal court by serving notice on the state court of the intention to file suit in federal court. As the record shows, this was requested before the superior court case was decided. The Southern District Complaint was filed April 20, 1994 that was before the June 30, 1994 "granting" of "summary judgment" in New Jersey Superior Court. Burrell at 250 (second claim asserted after initial claim disposed precludes application of the doctrine.) For that opinion to have been on the merits, Judge Keenan would have found an unconstitutional delegation of power. Moreover, the Anti-trust claims raised in the Second Amended Complaint provided for nationwide service of process and venue under 15 U.S.C. § 22. This provision for nationwide service of process means that a federal district court's jurisdiction is coextensive with the boundaries of the United States. *See e.g.*, American Trade Partners v. A-1 Int'l Importing Enter Inc., 755 F.Supp. 1292, 1302 (E.D.Pa. 1990). Moreover, the related Southern District case was dismissed instead of being transferred when the federal case was filed before the state case was decided that was used for preclusive effect instead of being transferred. Burnett v. New York Central R.R. Co., 380 U.S. 424, 430, 85 S.Ct. 1050, 1055 (1965) (The Supreme Court held that "It is in the interests of Justice to transfer a case rather than dismiss when refiling of this action in the proper venue would be barred by

applicable statutes of limitations") *See also* Goldvaur Inc. v. Herman 369 U.S. 463, 467 82 S.Ct. 913, 916 (1962) (Case should be transferred to save parties the time and expense of refiling this lawsuit in a different district.); 28 U.S.C. § 1406(a).

The related Southern District action has no preclusive effect on the New Jersey District Court action since it was dismissed without prejudice. On January 29, 1996, Petitioner Anonymous brought an action in District Court, Trenton, New Jersey challenging, *inter alia*, the New Jersey and New York Rules for Admission to the Bar as unconstitutional and violative of Antitrust laws. An unconstitutional delegation of power to the ABA and Seton Hall Law School injured the plaintiff's business and property. Defendants denied Plaintiff's rights secured for example, under: the United States Constitution, Article IV, the Fifth and Fourteenth Amendments; 42 U.S.C. §§ 1983, 1985(3), 15 U.S.C. §§ 1, 2, 15; and the common law. Plaintiff also sought injunctive relief to include: A Stay of a related State Court proceeding; Access to a Judicial Investigation of fraud between the Motion Judge in that state case and the former New Jersey Attorney General representing the New Jersey Judges in a related New York Southern District case; an Order Compelling the issuance of plaintiff's Diploma with the Correct Graduation date; and an Injunction prohibiting further publication of false and defamatory "information".

On January 29, 1996, plaintiff filed a Motion for a Temporary Injunction - Writ of Mandamus to stay a related New Jersey Court proceeding. Between February 12 and 13, the NJ, NY and ABA defendants received via certified mail a Summons, Notice and Acknowledgment of Receipt of Summons and Complaint. Defendants did not respond. On March 7, without cause, Judge Thompson denied the Motion for an injunction. Between March 19 and 25, the NJ, NY and ABA defendants were served by sheriffs. The NJ, NY and ABA defendants failed to respond. On March 19, plaintiff filed a Motion for an Order to Show Cause staying the inferior related state action; and why plaintiff should not be permitted access to records of an investigation (ACJC 95-199) into

the conduct of the New Jersey Superior Court Judge in the related New Jersey state proceeding. Judge Thompson never acted upon the request.

A default was entered on April 17, 1996, against Chief Justice Wilentz, NJ Justices Clifford, Handler, Pollock, O'Hern, Garibaldi and Stein, NY Judges Kaye, Bellacosa, Ciparick, Simons, Smith, Titone, and Levine, and the American Bar Association ("NJ", "NY" and ABA defendants.) (D). On June 12, the Default was vacated without cause. On June 24, plaintiff filed an appeal from the order vacating the Defaults. No. 96-5403. On July 19, the Record was transmitted to the Court of Appeals. On July 5, Judge Thompson was requested to certify the vacatur for appeal. She denied the request.

On July 22, 1996, Judge Thompson granted the Seton Hall defendants' motion to dismiss and denied plaintiff's July 8, 1996 Cross-Motion to Compel the correct dating of plaintiff's diploma and correctly certify plaintiff's graduation as January 1994, and not August 1994, and for an injunction prohibiting publication of defamatory information. She lacked jurisdiction to grant the motion to dismiss but did have jurisdiction to grant plaintiff's motions.

On September, 11, 1996, Judge Thompson dismissed without prejudice the Complaint against the NJ, NY and ABA defendants. On October 8, plaintiff requested leave to extend the time to appeal the dismissal. On Sunday, November 3, the day before the return date of November 4, the District Court denied a Motion for an Extension of Time to Appeal the dismissal of the Complaint. By doing so, Her Honor overlooked information filed with the court on the return date (with a request for leave to endorse the pleading as filed within time. Plaintiff waited to hear from the NY or NJ defendants for consent. Moreover, plaintiff originally sought adjournment of and consent to adjourn the original Motions for Dismissal.) On November 15, plaintiff filed a motion for reconsideration of the Order denying Motion for Leave to Extend the Time to Appeal. There was good cause for extending the time.

On December 30, the Court declined to reconsider the Sunday, November 3, denial.

On January 2, 1997, the Office of Staff Attorneys for the United States Court of Appeals, wrote "it would not be appropriate to submit this appeal [in No. 96-5403] to the Court for possible jurisdictional dismissal as you were originally advised by our letter of July 3, 1996.". On January 13, plaintiff-appellant's Motioned the Third Circuit to for Supplement leave to, *inter alia*, Extend the Time to Appeal the District Court's dismissal of the Complaint, appeal the District Court's refusal to issue the Order to Show Cause for access to a judicial investigation, the denial of an Order Compelling a correct Diploma and Graduation; and issue an injunction prohibiting the publication of false and defamatory information. After the Court of Appeals and the District Court declined to permit an extension of the time for filing an appeal of the complaint pending the outcome of Docket 96-5403, a Notice of Appeal was subsequently filed on March 7 (Docket 97-5129). An Amended Notice of Appeal was filed on May 16, to include an appeal of the District Court's refusal to "file the .appeal within time" (Docket 97-5318).

On May 5, 1997, a substitute panel of Circuit Judges granted a motion to dismiss for want of jurisdiction. The May 5 Order contradicts an April 16 Order of the Court that was not vacated. That previous Court Order stated: a "Motion by Appellant to Stay Appeal in 97-5129 which shall be construed as a Motion to Stay the Briefing in 96-5403 pending the jurisdictional issue in 97-5129. The briefing schedule is stayed pending the jurisdictional issue in 97-5129. In the event the appeal is dismissed for lack of jurisdiction or the jurisdictional question is referred to the merits panel appellant reply brief shall be filed and served within 10 days from the date of the order stating such." (The Motion to Dismiss the Appeal was filed about March 25, 1997, nearly one year later than the Appeal was filed on June 26, 1996).

The May 5, 1997 Order conflicted with the Third Circuit's Order on December 2, 1996 and the Court's Order of April 16, 1997. In effect, a substitute Panel of the Court dismissed an appeal that was stayed by a separate Order of the Court and that was reopened by an original Panel of the Court. To dismiss 96-5403 without first addressing the jurisdictional issue in 97-5129 violates due process as it deprived the plaintiff of the opportunity to file a reply as stated in the Court's Order of April 16, 1997. Because of the conflict within the circuit, the matter should be reheard in banc and by the original panel.

The petition for a writ of certiorari to the Third Circuit should be granted including the reasons stated in Supreme Court Rules 10 and 11 (E1). The Order vacating the default was immediately appealable as the consequences of the Order had the effect and were the equivalent of refusing and dissolving an injunction. 28 U.S.C. §1292; Carson v. American Brands, Inc., 101 S.Ct. 993, 450 U.S. 79 (1981) Showing of irreparable harm is not required. Id. The default was the equivalent of a stay order under the "All Writs Act" that Judge Thompson refused on March 11, 1996 and of a March 19, 1996, request for an Order to Show Cause why the New Jersey state proceedings should not be stayed that Judge Thompson' never granted or denied.

The filing of an appeal of the vacatur was an event of jurisdictional significance -- it conferred jurisdiction on the court of appeals and divested the district court of its control over those aspects of the case involved in the appeal. Griggs v. Provident Consumer Discount Co. 459 U.S. 56, 103 S.Ct. 400 (1982) (*per curiam*). Until the mandate issues and returns it to the district court, the case was "in" the court of appeals, and any action by the district court was a nullity. (Citations omitted.) Judge Thompson lacked jurisdiction to dismiss the complaint pending appeal of the vacatur of the default and the Order dismissing the complaint on preclusion principles is a nullity.

The subsequent Order dismissing the Complaint was based on the state proceedings that plaintiff sought to stay. The sole purpose of the vacatur was to surrender jurisdiction of a federal suit to a state court. Moses H. Cone Memorial Hosp. v. Mercury Const. 460 U.S., 103 S.Ct. 927 (1983). That Order dismissing the complaint is null and void as the vacatur was appealable under the Collateral Order doctrine. Id. (Orders are immediately appealable when the *res judicata* effect of the state court judgment would preclude further litigation in the federal forum.) An order must be considered a final order appealable under 28 U.S.C. § 1291 when it effectively renders appellant out of the federal court. Id. A Notice of Appeal was subsequently filed with reservation to the extent that the Appeal of the vacatur of default divested the district court of jurisdiction to dismiss the complaint. If the appeal was premature, it is converted without jurisdictional defect into a 28 U.S.C. § 1291 Notice of Appeal. Id.

Judge Thompson vacated the Default without cause as the only cause was self serving to the defendants. Judge Thompson committed reversible error by never considering, discussing or examining the factors necessary before examining whether or not to vacate a default. The defendants never showed good cause for vacating the Default. They failed to meet the threshold requirement of establishing a meritorious defense. The plaintiff was severely prejudiced by setting aside and vacating the default. By default, defendants' admit every matter alleged in plaintiff's complaint. The defendants did not show their conduct was culpable. It is obvious by the fact that not one, but three separate sets of defendants defaulted, that there was an attempt by defendants to gain a tactical advantage in this matter. Moreover, by the ABA counsel's own admission, the ABA's conduct was culpable. There is sufficient evidence on the face of the record from which the court can find that defendants' delay was intentional, willful and in bad faith. Furthermore, contrary to decisional law of this Circuit, the District Judge did not vacate the default to decide the merits of the case. (Citation omitted.) For example, Judge Thompson committed

reversible error by "dismissing" the complaint against the NY defendants on the basis of a waivable defense.

It is clear the appeal of the vacatur is justiciable considering the relationship of the default to the issues related to delegation of power. The stay of the New Jersey proceeding concerns a state case where the Court lacked subject matter jurisdiction over the claims necessary to resolve the controversy. As the constitutional claims ripened, the state court lacked subject matter jurisdiction to answer the threshold questions raised in this complaint, including the delegation of power question. That unconstitutional delegation of power was the basis that prohibited plaintiff from taking take the February and July 1994 New York State Bar examinations. First must be decided the constitutionally of state Supreme Court rules and the delegation of power.

As the constitutional claim ripened, plaintiff immediately filed a complaint in the Federal Court. Requests were made to both the Southern District and the New Jersey state courts for a stay until the issues were decided in federal court and for excused joinder of claims. It is undisputed that the related state proceeding court did not consider the delegation of power issue. This matter has yet to be decided on the merits. Therefore, since the standards governing the state court from the District Court were significantly different, the state court "ruling" could not be given preclusion effect in federal court. Davidson v. Capuano, 792 F.2d 275, 278 (CA2 1986) (no preclusion when initial forum did not have power to award the full measure of relief sought in the later litigation.) There is reasonable doubt as to what was decided by the state court proceeding and should be resolved against using it as an preclusion. (Citation omitted.) The New Jersey decisions are clearly erroneous and therefore no preclusive effect in a federal proceeding. Watkins v. Resorts Int'l Hotel & Casino, Inc., 124 N.J. 398, 591 A.2d 592 (1991). The New Jersey Courts were requested to stay their proceedings pending the outcome of this case. Judge Thompson herself acknowledged even the Seton Hall defendants' own

admission, that a motion for reconsideration is currently pending is before the New Jersey Supreme Court, docketed as No. 40,895.

Although Judge Thompson lacked jurisdiction upon appeal, she dismissed the complaint on preclusion principles despite the fact the Complaint was not precluded by the related state court action under either Res Judicata or the N.J. Entire Controversy Doctrine. The New Jersey Entire Controversy Doctrine specifically allows exceptions to the doctrine. It says, "to the extent required by the Entire Controversy Doctrine. N.J.R.C.P. 4:30A. (Emphasis added.) There are an extensive amount of circumstances where the doctrine does not apply. *See e.g.*, Burrell v. Quaranta, 259 N.J. Super. 243 (A.D. 1992) (Court has no jurisdiction over the claim ...); Bennun v. Rutgers State University 941 F.2d 154, 167 (CA 3 1991) (New Jersey's courts would not apply the entire controversy doctrine to this case ...); Nanavati v. Burdett Tomlin Memorial Hosp., 857 F.2d 96 (CA 3 1988) (preclusion does not apply to claims over which the initial New Jersey court lacked jurisdiction.) An exception is made to the entire controversy doctrine when there is an inequality of forums. Cafferata v. Peyser, 251 N.J. Super. 256 (1991); Thornton v. Potamkin Chevrolet, 94 N.J. 1 (1983). *see also* Nanavate v. Burdette Tomlin Memorial Hosp., 857 F.2d 96 (CA 3 1988) (Anti-trust claims are not precluded by any state court decision.) Clearly the New Jersey state courts was an inferior court and lacked subject matter jurisdiction over constitutional claims, the underlying delegation of power and anti-trust issues raised in this federal proceeding. The state court did not have concurrent jurisdiction to hear the claim now sought to be concluded. There is no likelihood that it would have exercised jurisdiction to hear these claim. Moreover, the state proceeding should have been stayed. 28 U.S.C. § 1651(a), 28 U.S.C. §2283. Therefore, a opinion entered by a court without subject matter jurisdiction is not entitled to full faith and credit. There is no automatic application of the doctrines. The entire controversy doctrine does not "require joinder of all claims and parties in the New Jersey action." The doctrine permits the preservation of claims for subsequent litigation. The Third Circuit has already ruled that under the New Jersey Entire

Controversy Doctrine, the request for excused joinder of parties or claims perfects the right to adjudicate related matters in a separate forum. Claims are not later barred elsewhere when a party requests excused joinder from a state court to litigate in federal court. Bernardsville Quarry v. Borough of Bernardsville, 929 F.2d 927, 930 (CA3 1991); Ditrolio v. Antiles, 142 N.J. 253, 275 (1995); Cogdell at 28; Brown v. Brown, 208 N.J. Super. 372, 382 (A.D. 1986). The Court in Bernardsville Quarry said that a litigant can avoid the effect of the Doctrine by informing the state court of intention to return to the federal court to litigate its federal claim. Id. at 930. To satisfy the doctrine, a party need only assert the claim. Burrell v. Quaranta, 259 N.J. Super. 243 (A.D. 1992) *citing* Woodward-Clyde, 105 N.J. at 473 (citation omitted.) Moreover, a "constituent" claim arising during the litigation is not barred from subsequent suit when a motion is made in the original action for leave to a supplement pleading has been denied. Brown v. Brown 208 N.J. Super. 372, 384 (A.D. 1986). The state court was on notice of other claims and issues. The plaintiff requested excused joinder from the motion judge in the state court and asked the Southern District to waive the requirement to seek the excused joinder. The state court judge was required to either grant excused joinder or order joinder of the claims and parties. (Citation omitted.) The motion judge committed reversible error by not excusing joinder or order severance. However, by not ordering joinder or granting the severance, the "judgment" in the state case has no preclusive effect to the instant case. Moreover, the doctrine does not apply to any subsequent issues filed prior to entry of final judgment. State v. Standard Tank, 284 N.J. Super. 381, 395 (A.D. 1995). The entire controversy doctrine does not apply to unknown or unaccrued claims. N.J.R. 4:30A. It is clear that the claim did not ripen until well after the filing of the suit in the New Jersey Superior Court after the SHU defendants refused to certify plaintiff's graduation to take the February 1994 New York Bar exam.

It is evident the conditions for applying *res judicata* are not met. For example, under New Jersey law, *res judicata* does not apply when (1) the judgment in the first action is not valid, final or on the

merits; (2) the parties in the second action are not in privity with those in the first action; and (3) the claim in the later action does not grow out of the same transaction or occurrence as the claim in the first action. Watkins v. Resorts Int'l Hotel & Casino, Inc., 124 N.J. 398 (1991). *Res judicata* does not apply when a party did not have a "full and fair opportunity" to litigate those issues in the earlier case. Montana v. U.S., 99 S.Ct. 970, 973 (1979). Preclusion does not apply because the plaintiff did not have a "full and fair opportunity" to litigate those issues in the earlier case. The record is clear the plaintiff did not have a full and fair opportunity to litigate the issues and claims in the state action. For example: discovery was not complete prior to the state court consideration of summary judgment. Plaintiff was deprived of crucial witnesses and evidence; Plaintiff was denied a motion to amend the complaint; neither the claims nor the transaction was the same; and Summary Judgment in the state action was inappropriate. Moreover the instant case is not precluded by the "state action" because no privity existed as their was proof the SHU defendants would not indemnify the state action defendant nor provide him with documents. *see e.g.*, Stegneier v. St. Elizabeth Hosp. 239 N.J. Super. 475, 486 (A. D. 1990) *citing* McFadden v. Turner, 159 N.J. Super. 360 (A.D. 1978) (Cause of action against hospital and its employees can be split.) Finally, in this case is the suggestion that the outcome in the related state case was procured by fraud and perjury.

Moreover, under New Jersey law, a state court decision has no preclusive effect until the United States Supreme Court has denied petition for *certiorari*. *See e.g.* Hodgkin v. Applegate, 31 N.J. 29, 43 (1959). The New Jersey state court "decision" is not final, valid and on the merits. Pending an appeal, a judgment lacks that character of finality which is requisite to constitute *res judicata*. McCusker v. Commonwealth Cas. Co., 106 N.J. 116 (1930); DeCamp v. Miller, 44 N.J.L. 617 (1882). Currently pending is a motion for Reconsideration that is based, in part, on the default entered against the NJ defendants. Moreover, under New Jersey law, the New Jersey Appellate Decision was appealable as of right. For example, an Appellate Judge was removed making the decision

appealable as a matter of right because the decision was not unanimous. *See e.g.*, Brandenburg v. Brandenburg, 83 N.J. 198 (1980). The subject matter was appealable as of right and certification under the New Jersey Supreme Court's supervisory powers to regulate the practice of law. N.J.R. 2:2-1(a)(4), N.J. Const. Art. VI, §II, ¶ 3; NJ State Bar Ass'n v. NJ Ass'n of Realtor Bds., 93 N.J. 470 (1983); Application of Matthews, 94 N.J. 59 (1983). Moreover, it is naive to believe the NJ defendants could fairly judge themselves. Therefore, the state court "judgment" is null and void and not a bar to the instant case.

Accordingly, Anonymous v. Kaye in the Second Circuit should be stayed pending resolution of the Petition for Certiorari of the default in the Third Circuit by the defendants in Anonymous v. Wilentz.

CONCLUSION

Petitioner respectfully requests that a writ of certiorari issue to review the judgment below in the Second Circuit Court of Appeals in I/M/O Poritz 96-7164; and to extend the time to appeal and stay the decision in the related Second Circuit case Anonymous v. Kaye et al. 95-9295.

Respectfully submitted,

Petitioner Anonymous

T 1080

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

FILED MAR 6 1997

IMO ANONYMOUS, Plaintiff-Appellant 95-9295

v.

NOTICE OF MOTION

Chief Judge Judith S. Kaye,
et. al., Defendants-Appellees

RECONSIDERATION
STAY
EXTEND TIME TO APPEAL

MOTION BY Michael Barth
P.O. Box 315
Liberty Corner, NJ 07938
908-604-9263

OPPOSING COUNSEL:
See Rider

Has consent of opposing counsel:
A. been sought? ☐ Yes ■ No
B. been obtained? ☐ Yes ☐ No
Has service been effected? ■ Yes ☐ No
Has request for relief been made below? ☐ Yes ☐ No
Is oral argument desired? ☐ Yes ☐ No (*See F.R.A.P. Rule 8)*
(*Substantive motions only)*
Requested return date: N/A
Would expedited appeal eliminate need for this motion?
☐ Yes ☐ No
(*See Second Circuit Rule 27(b))* If No, explain why not:
Has argument date of appeal been set: N/A
A. by scheduling order? ☐ Yes ☐ No
B. by firm date of argument notice? ☐ Yes ☐ No
Will the parties agree to maintain the status quo until the motion is heard? ☐ Yes ☐ No
C. If Yes, enter date: _____
Judge or agency whose order is being appealed:

A1

Brief statement of the relief requested:

Plaintiff-Appellant respectfully requests the Court of Appeals for the Second Circuit Reconsider its Summary Order or alternatively Stay its decision or Extend the Time to Appeal pending the outcome of the default entered in New Jersey Federal District Case on a related matter.

Complete Page 2 of this Form

By: (*signature of attorney*) Appearing for: (*Name of party*)

Appellant or Petitioner:

Plaintiff ☒ Defendant ☐

Appellee or Respondent:

Plaintiff ☐ Defendant ☐

_____

_____

Signed name must be printed beneath Date

_____

_____ **ORDER**

_____

Kindly leave this space blank

IT IS HEREBY ORDERED that the motion be and it hereby is

~~granted~~ **denied** FILED JAN 7 1997

SIGNED

_____

4/2/97

_____

Date

Circuit Judge

A2

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

MANDATE

94-CV2882
JUDGE KLEEMAN

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

FILED Dec 23 1996

Second Circuit

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 23rd day of December one thousand nine hundred and ninety six.

PRESENT: HONORABLE RICHARD J. CARDAMONE
HONORABLE FRED I. PARKER,
Circuit Judges
HONORABLE LEONARD D. WEXLER,[1]
District Judge

IN THE MATTER OF ANONYMOUS, Plaintiff-Appellant,
v. No. 95-9295

JUDITH S. KAYE, Chief Judge, JOSEPH BELLACOSA, CARMEN BEAUCHAMP CIPARICK, HOWARD A. LEVINE, RICHARD D. SIMONS, GEORGE BUNDI SMITH, and VITO J. TITONE individually and in their official capacity as Judges of the Court of Appeals of the State of New York; CHIEF JUSTICE

---

[1]Of the United States District Court for the Eastern District of New YOrk, sitting by designation.

ISSUED MANDATE 2/25/97

A2

WILENTZ, JUSTICE CLIFFORD, JUSTICE HANDLER, JUSTICE POLLOCK, JUSTICE O'HERN, JUSTICE GARIBALDI, JUSTICE STEIN individually and in their official capacity as Judges of the Supreme Court of the State of New Jersey; SETON HALL UNIVERSITY SCHOOL OF LAW, A Corporation of the State of New Jersey; THE TRUSTEES OF SETON HALL UNIVERSITY SCHOOL OF LAW, Dean RONALD R. RICCIO, individually and in their official capacities; Defendants-Appellees.

APPEARING FOR APPELLANT:
Redacted Pro Se, Liberty Corner, NJ

APPEARING FOR APPELLEES, New York State Judges:
Carolyn C. Olson, Assistant
Attorney General State of New York, New York, NY

APPEARING FOR APPELLEES, On Submission.
New Jersey Supreme Court:

APPEARING FOR APPELLEES, On Submission.
Seton Hall University
defendants:

Appeal from the United States District Court for the Southern District of new York (John F. Keenan, Judge).

This cause came to be heard on the transcript of record from the United States District Court for the Southern District of New York and was argued by appellant pro se and counsel for defendants-appellees New York State Judges.

ON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the judgment of the District Court be and it hereby is AFFIRMED.

A3

Pro se appellant appeals from the judgment of the United States District Court for the Southern District of New York, which dismissed appellant's First Amended Complaint.

Appellant is a New Jersey resident who seeks to take the New York State Bar Exam. The New York State Board of Law Examiners denied appellant's application to take the exam because appellant's law school, Seton Hall University School of Law ("Seton Hall"), refused to forward a law school "Certificate of Attendance" as well as a certified sample of appellant's handwriting. The Board of Law Examiners requires both the certificate and the handwriting sample before it will grant an applicant permission to take the bar exam.

Seton Hall refused to provide the certification and the handwriting sample because appellant had not satisfied the school's residency requirements for graduation. Appellant's failure to satisfy those requirements arose out of an incident that occurred in the summer 1993, while appellant was enrolled in an Administrative Law course that had a take-home final exam. The professor of that course determined that in his answer to the exam, appellant had plagiarized the Supreme Court brief that was submitted in the original case. The professor reported the plagiarism to Associate Dean Michael J. Zimmer. Zimmer decided that appellant would receive a failing grade in the course and would receive a failing grade in the course and would be suspended from law school for one year. Seton Hall's Probation and Grievance Committee upheld the finding that plaintiff had plagiarized, but it recommended that the suspension not be enforced. The Dean of Seton Hall, Ronald J. Riccio, ultimately decided not to enforce the suspension.

In August 1993, appellant sued Associate Dean Zimmer in new Jersey Superior Court. In that action, appellant alleged that a letter that Zimmer had written appellant, which outlined the finding of plagiarism, was defamatory. Therefore, the lawsuit was based on the theory that appellant had not committed plagiarism. Appellant did not include Seton Hall or Dean Riccio in the state court lawsuit. On June 30, 1994, the Superior Court granted Zimmer's motion for summary judgment. That judgment was affirmed by the New Jersey Appellate Division on March 24, 1995.

On April 20, 1994, appellant commenced the instant matter in the Southern District of New York. Appellant' First Amended Complaint asserted claims against three defendants appellees: Seton Hall and Dean Riccio ("Seton Hall")_; then-Justices of the New Jersey Supreme Court ("NJ Justices"); and then-Judges of the New York State Court of Appeals ("NYS Judges").

1. Relying upon New Jersey's entire controversy doctrine," the district court granted Seton Hall's motion to dismiss the claims against it on the grounds of res judicata. This court reviews that decision de novo. See Cameron v. Fogarty, 806 F.2d 380, 384-85 (2d Cir. 1986).

Under the full faith and credit clause, a federal court presented with a state court judgment must give that judgment the same force and effect that it would have in the state where it was rendered. See Migra v. Warren City Sch. Dist. Bd. of Educ., 465 U.S. 75, 81 (1984). New Jersey's entire controversy doctrine requires all claims arising out of the same controversy to be joined in a single action. See Lubrizol Corp. v. Exxon Corp., 929 F.2d 960, 965 (3d Cir. 1991); Bernardsville Quarry v. Borough of Bernardsville, 929 F.2d 927, 930 (3d Cir. 1991).

The claims that appellant asserted against Seton hall in the district court action arise out of appellant's plagiarism and subsequent disciplinary proceedings. Under the entire controversy doctrine, therefore, appellant should have included those claims in the lawsuit instituted in New Jersey Superior Court. Because appellant failed to include Seton Hall in that lawsuit, the district court is barred from hearing those claims. See Lubrizol Corp., 929 F.2d at 965; Bernardsville, 929 F.2d at 930.

2. The district court dismissed the claims against the NJ Justices on the grounds that the court lacked personal jurisdiction over the Justices pursuant to Fed. R. Civ. P. 12 (b)(2). This Court reviews the district court's decision to dismiss the claims for lack of personal jurisdiction de novo. See Robinson v. Overseas Military Sales Corp., 21 F.3d 502, 507 (2d Cir. 1994).

Appellant's claims against the NJ Justices arise under 46 U.S.C. § 1983. [*sic*]. Because § 1983 does not provide for service of process beyond state borders, the district court requires

authorization from the state long-arm statute, N.Y.C.P.L.R. § 302, before it may exercise personal jurisdiction over the out-of-state defendants-appellees. See Omni Capital Int'l v. Rudolf Wolff & Co., 484 U.S. 97, 105 (1987).

Pursuant to § 302, a party may be subject to personal jurisdiction in New York if that party transacts business in New York, se § 302(1); committed a tort outside the state, the effects of which are felt in New York, see § 302 (c) (2) - (3); or possesses real property in New York, see § 302 (c) (4). Because the NJ Justices do not fit into any of these categories, the district court properly held that none of these bases for jurisdiction apply.

3. The district court granted the NYS Judges' motion to dismiss the claims against them for improper venue, pursuant to Fed. R. Civ. P. 12 (b) (3). This court reviews that decision for improper venue for abuse of discretion. See Minnete v. Time Warner, 997 F.2d 1023, 1026 (2d Cir. 1993).

On a motion to dismiss for improper venue, the plaintiff has the burden of establishing that it has chosen the proper venue. See Pocahontas Supreme Coal Co. v. National Mines Corp., 90 F.R.D. 67, 69 (S.D.N.Y. 1981). 28 U.S.C. § 1391)b) is the venue statute applicable to federal question cases. The district court concluded that appellant failed to establish that venue in the Southern District of new York was proper under any of the three subdivisions of § 1391(b). Having reviewed the record, we may not say that this determination constitutes an abuse of discretion.

We have reviewed the remainder of appellant's claims and have determined that they are without merit.

Accordingly, the decision of the district court is AFFIRMED.

RICHARD J. CARDAMONE, U.S.C.J.
FRED I. PARKER, U.S.C.J.
LEONARD D. WEXLER, U.S.D.C.J.

A6

T 1080

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

IMO ANONYMOUS, Plaintiff-Appellant v. Chief Judge Judith S. Kaye, et. al., Defendants-Appellees	95-9295 NOTICE OF MOTION SUPPLEMENT RECORD

MOTION BY Michael Barth
P.O. Box 315
Liberty Corner, NJ 07938
908-604-9263

OPPOSING COUNSEL:
See Rider

Has consent of opposing counsel:
A. been sought? ☐ Yes ■ No
B. been obtained? ☐ Yes ☐ No

EMERGENCY MOTIONS, MOTIONS FOR STAYS & INJUNCTIONS PENDING APPEAL

Has service been effected? ■ Yes ☐ No
Has request for relief been made below? ☐ Yes ☐ No
Is oral argument desired? ☐ Yes ■ No (*See F.R.A.P. Rule 8)*
(*Substantive motions only)*
Would expedited appeal eliminate need for
Requested return date: for this motion?
☐ Yes ☐ No
(*See Second Circuit Rule 27(b)*) If No, explain why not:
Has argument date of appeal been set:
A. by scheduling order? N/A ■ Yes ☐ No
B. by firm date of argument notice? ■ Yes ☐ No
C. If Yes, enter date: 12/13/96
Will the parties agree to maintain the status quo until the motion is heard? ☐ Yes ☐ No

FLED Dec 5 1996
SECOND CIRCUIT

A7

Judge or agency whose order is being appealed:

Brief statement of the relief requested:

Plaintiff-Appellant respectfully requests the Court of Appeals for the Second Circuit amend the record and accordingly accept the brief recently submitted as filed within time.

Complete Page 2 of this Form

By: (*signature of attorney*) Appearing for: (*Name of party*)
Appellant or Petitioner:

☐

Plaintiff ■ Defendant

Appellee or Respondent:

☐

Plaintiff ☐ Defendant

Signed name must be printed beneath Date 11/25/96

ORDER

Kindly leave this space blank

IT IS HEREBY ORDERED that the motion be and it hereby is ~~granted~~ denied

Signed Parker

12/5/96

Date

Circuit Judge

A8

UNITED STATES COURT OF APPEALS
For The
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 24th day of April one thousand nine hundred and ninety-six,

FILED APR 24 1996
Second Circuit

In Re: Deborah T. Poritz
96-7164

A motion having been made herein by petitioner pros se for leave to proceed in forma pauperis, upon consideration thereof, it is ordered that said motion be and it hereby is denied, and the appeal is dismissed as so indisputably lacking in merit as to be frivolous within the meaning of 28 U.S.C. § 1915(d) See Neitzke v. Williams, 490 U.S. 319 (1989).

BI Sloved

Issued Mandate
4-24-96

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

In Re: Deborah T. Poritz

NOTICE OF MOTION
Extend Time to Appeal
96-7164

PLEASE TAKE NOTICE of a motion to the United States Court of Appeals for the Second Circuit for Leave to extend the Time to appeal to the United States Supreme Court

Certification

The undersigned certifies that an original and four copies of the Notice of Appeal, Affidavit and Appendices were mailed to the Clerk's Office, United States Court of Appeals for the Second Circuit, United States Courthouse, Foley Square, New York, New York 10007; and two copies of the same to New Jersey Deputy Attorney General Don E. Catinello, New Jersey Dept. of Law and Public Safety, CN 112, Trenton, new Jersey 08625-0081.

P.O. Box 315
Liberty Corner, New Jersey 07938
908-604-9263

Certified Mail P 341 456 150 November 26, 1996

Re stamped

NOV 2 0 1996

B2

UNITED STATES COURT OF APPEALS
For The SECOND CIRCUIT
UNITED STATES COURT HOUSE
40 FOLEY SQUARE
NEW YORK 10007

George Lange III
Clerk

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 1st day of August one thousand nine hundred and ninety-six,

Present Hon. Ellsworth A. Van Graafeiland,
Hon J. Daniel Mahoney,
Hon. John M. Walker,
Circuit Judges

FILED
AUG 1 1996
Second Cir.

In Re: Deborah T. Poritz,
New Jersey Attorney General
96-7164

A petition for rehearing have been filed herein by *REDACTED*
Upon consideration thereof, it is
Ordered that said petition be and it hereby is DENIED.

GEORGE LANGE II, Clerk

By
Beth J. Meador,
Administrative Attorney

pethrg_frm
p/o/AA

B3

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED
(SOUTHERN DISTRICT OF NEW YORK RULES)

Rule 4. Discipline of Attorneys

(a) The chief judge shall appoint a committee of the board of judges known as the committee on grievances, which under the direction of the chief judge shall have charge of all matters relating to discipline of attorneys. The committee on grievances may entertain complaints in writing from any source. Complaints and any files based on them, shall be treated as confidential. The chief judge shall appoint a committee of attorneys who are members of the bar of this court to advise or assist the committee on grievances. Members of this committee will investigate complaints, and will serve as members of hearing panels.

(b) If it appears, after notice and opportunity to be heard, than any member of the bar of this court has been convicted of a felony in any federal court, or in the court of any state, territory, district, commonwealth or possession, the member's name shall be struck from the roll of members of the bar of this court.

(c) If it appears, after notice and opportunity to be heard, that any member of this court has been convicted of a misdemeanor, in any federal court or in the court of any state, territory, district, commonwealth or possession, the member may be disciplined by this court, in accordance with the provisions of paragraph (g).

(d) If it appears, after notice and opportunity to be heard, that any member of the bar of this court has been disciplined by any federal court or by the court of any state, territory, district, commonwealth or possession, the member may be disciplined by this court, in accordance with the provisions of paragraph (g).

(e) If it appears, after notice and opportunity to be heard, that any member of the bar of this court has resigned from the bar of any federal court or the court of any state, territory, district, commonwealth or possession while an investigation into allegations of misconduct by the attorney were pending, the member may be disciplined by this court in accordance with the provisions of paragraph (g).

(f) If, in connection with activities in this court, any attorney is found guilty be clear and convincing evidence, after notice and opportunity to be heard, of conduct violative of the Codes of Professional Responsibility of the American Bar Association or the New York Bar Association from time to time in force, the attorney may be disciplined by this court, in accordance with the provisions of paragraph (g).

(g) Discipline imposed pursuant to paragraph (c), (d), (e) or (f) may consist of suspension or censure. In the case of an attorney who is a member of the bar of this court, it may also consist of striking the name of the attorney from the roll. In the case of an attorney admitted pro hac vice, it may also consist of precluding the attorney from again appearing at the bar of this court. Upon the entry of an order of preclusion, the clerk shall transmit to the court or courts where the attorney was admitted to practice a certified copy of the order, and of the court's opinion, if any.

Discipline may be imposed by this court with respect to paragraphs (d) and (e) unless the member of the bar concerned establishes by clear and convincing evidence: (1) with respect o paragraph (d) that there was such an infirmity of proof of misconduct by the attorney as to give rise to the clear conviction that this court could not consistently with its duty accept as final the conclusion of the other court; or (2) that the procedure resulting in the investigation or discipline of the attorney by the other court was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or that the imposition of discipline of this court would result in grave injustice.

(h) If it appears, after notice and opportunity to be heard, that any lawyer not a member of the bar of this court has appeared at the bar of this court without permission to do so, said lawyer may be precluded from against appearing at the bar of this court. Upon the entry of an order of preclusion, the clerk shall transmit to the court or courts where the attorney was admitted to practice a certified copy of the order and of the court' opinion, if any.

(i) Complaint in writing alleging that any member of the bar of this court is in a category described in paragraphs (b) through (e), or that any attorney practicing in this court has committed the

misconduct refereed to in paragraph (f), will be directed to the chief judge who shall refer such complaints to the committee on grievances which may designate an attorney selected from the panel of attorneys to investigate the allegations if it deems investigation necessary or warranted. If, with or without investigation, the committee on grievances deems that the charges require prosecution, a statement of charges shall be served n the attorney concerned together with an order to show cause why discipline should not be imposed. Upon the respondent attorney's answer to the charge the matter will be scheduled for prompt hearing before a penal of attorneys which will report findings and recommendations. After such a hearing and report, or if no timely answer is made by the respondent attorney or if the answer raises no issue requiring a hearing, such action shall be taken as justice and this rule may require.

(j) Any attorney who has been suspended or whose name has been struck from the roll of the members of the bar of this court may apply in writing to the chief judge for good cause shown, for the lifting of suspension or for reinstatement to the rolls. The committee on grievances shall act upon the application, either immediately or after receiving findings and recommendations from a hearing panel of attorney to which the application has been referred.

(k) Misconduct of any attorney in the presence of this court or in any manner in respect to any matter pending in this court may be dealt with directly by the judge in charge of the matter or at said judge's option referred to the committee on grievances, or both.

(l) whenever it appears than [sic] an attorney admitted to practice in this court of any state, territory, district, commonwealth or possession, or in aye other federal court, has in this court been convicted of any crime or disbarred, suspended or censured the clerk shall send to such other court or courts a certified copy of the judgment of conviction or order of disbarment, suspension or censure, and a statement of the attorney's last known office and resident address.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IMO ANONYMOUS,	:	
	:	
Plaintiff,	:	CERTIFICATE OF CLERK
	:	
-vs-	:	CIVIL 96-452 (AET)
	:	
CHIEF JUSTICE WILENTZ, et al.,	:	
	:	
Defendants	:	

It appearing the plaintiff having requested the entry of default as to the defendants, **chief Justice Wilentz, NJ Justices Clifford, Handler, Pollock, O'Hern, Garibaldi and Stein,** (all served on March 19, 1996), **and The American Bar Association** (served March 22, 1996) for failure to plead:

It appearing said defendants were properly served **on the aforementioned dates;**

It is hereby certified default for failure to plead has been entered this **April 17, 1996** against said defendants.

William T. Walsh, Clerk
by Michael D. Shanklin
Deputy Clerk

Original Filed
Apr 17 1996
William Walsh Clerk

PLAINTIFF IS HEREBY ADVISED THAT HE MUST FILE A FORMAL MOTION TO THE COURT FOR THE ENTRY OF DEFAULT JUDGMENT. THE MOTION MUST BE IN COMPLETE COMPLIANCE WITH LOCAL RULE 12 OF THIS DISTRICT.

D1

No. _____

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1996

IN THE MATTER OF ANONYMOUS - PETITIONER

v.

CHIEF JUSTICE WILENTZ, JUSTICES CLIFFORD, HANDLER, POLLOCK, O'HERN, GARIBALDI, STEIN individually and in their official capacity as Judges of the Supreme Court of the State of New Jersey (herein-after the "New Jersey Defendants"); the New Jersey Rules for Admission to the Bar; CHIEF JUDGE JUDITH S. KAYE, and ASSOCIATE JUDGES JOSEPH BELLACOSA, CARMEN BEAUCHAMP CIPARICK, HOWARD A. LEVINE, RICHARD D. SIMONS, GEORGE BUNDI SMITH, and VITO J. TITONE individually and in their official capacity as Judges of the Court of Appeals of the State of New York; (herein-after the "New York Defendants"); the New York Rules for Admission to the Bar; SETON HALL UNIVERSITY, A Corporation of the State of New Jersey; SETON HALL UNIVERSITY SCHOOL OF LAW, A Corporation of the State of New Jersey, THE BOARD OF REGENTS OF SETON HALL UNIVERSITY (J. Doe 1 - 27); THE TRUSTEES OF SETON HALL UNIVERSITY (J. Does 28 -31); THE TRUSTEES OF SETON HALL UNIVERSITY SCHOOL OF LAW (J. Does 32 - 45), Dean RONALD J. RICCIO, Professor CAROL R. GOFORTH, Professor D MICHAEL RISINGER, individually and in their official capacities; (herein-after the "SHU Defendants); The AMERICAN BAR ASSOCIATION - RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Petitioner, POB 315, Liberty Corner, N.J. 07938

E1